

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-66
Table of Allotments,)	RM-8729
FM Broadcast Stations.)	RM-8821
(Sibley, Iowa, and Brandon,)	
South Dakota))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 28, 1998

Released: November 6, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making in this proceeding. 11 FCC Rcd 3635 (1996). 21st Century Radio Ventures, Inc. ("21st Century") filed Comments, Amendment to Comments and Reply Comments. Brandon Broadcasters filed Comments and Counterproposal. For the reasons discussed below, we are allotting Channel 261A to Brandon, South Dakota.

Background

2. At the request of 21st Century, permittee of Station KAJQ, Channel 262A, Sibley, Iowa, the Notice in this proceeding proposed the substitution of Channel 261C3 for Channel 262A, reallocation of Channel 261C3 to Brandon, South Dakota, and modification of the Station KAJQ construction permit to specify operation on Channel 261C3 at Brandon. In response to the Notice, Brandon Broadcasters filed a Counterproposal proposing the allotment of Channel 261A to Brandon.

3. The underlying reallocation proposal for Channel 261C3 at Brandon was filed pursuant to Section 1.420(i) of the Commission's Rules. Section 1.420(i) permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989); recon. granted in part, 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Allotment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).¹ In making the evaluation, we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

4. In order to evaluate these proposals, it is first necessary to address one argument set forth by 21st Century in its Reply Comments. According to 21st Century, the Brandon Broadcasters

¹The FM priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

counterproposal for a Channel 261A allotment at Brandon does not comply with the minimum separation requirements set forth in Section 73.207(a) of the Rules with respect to the existing Channel 262A allotment at Sibley.² This argument is not well taken. Even though the proposed Channel 261A allotment at Brandon does not meet the minimum separation requirement in regard to the original reference coordinates designated by the Commission for the Channel 262A at Sibley, it does meet the applicable separation requirement with respect to the outstanding Station KAJQ construction permit. Section 73.208 of the Rules sets forth the applicable reference points to be used in determining distance computations. Under Section 73.208(a)(1)(i) of the Rules, the first applicable reference point is an authorized transmitter site. As such, the proposal for a Channel 261A allotment at Brandon need only meet the applicable separation requirement to the Station KFAQ construction permit at Sibley. Therefore, the Brandon Broadcasters counterproposal for Channel 261A at Brandon complies with Section 73.207(a) of the Rules and will be considered in this proceeding.

5. We are allotting Channel 261A to Brandon, South Dakota.³ This will provide a first local service to Brandon and provide an service to 129,474 persons in an area of 2,516 square kilometers.⁴ In taking this action, we realize that a Channel 261C3 allotment at Brandon as proposed by 21st Century would have served 151,998 persons in an area of 4,802 square kilometers. However, modifying the Station KAJQ construction permit to specify operation on Channel 261C3 at Brandon would result in 23,818 persons in an area of 2,516 square kilometers not being served by the existing Station KAJQ construction permit on Channel 262A at Sibley.⁵ Taking this fact into consideration, the proposed Channel 261C3 reallocation to Brandon would result in a net gain of 128,180 persons, slightly less than the 129,474 persons that would be served by a new Channel 261A allotment at Brandon. It is our view that a Channel 261A allotment at Brandon and a Channel 262A allotment Sibley is, compared to a single Channel 261C3 allotment at Brandon, the preferential arrangement of allotments required by Community of License and FM Priorities. This will result in a first local service at both Sibley and Brandon and result in service to a total of 153,292 persons.

6. Accordingly, pursuant to Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 23, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City

Channel No.

²Section 73.207(a) of the Rules requires a minimum 72-kilometer (45 miles) separation between a Channel 261A allotment at Brandon and a first adjacent Channel 262A allotment at Sibley.

³The reference coordinates for the Channel 261A allotment at Brandon, South Dakota, are 43-36-02 and 96-31-15.

⁴In taking this action, we concur with both Brandon Broadcasters and 21st Century that Brandon is entitled to consideration as a first local service. See RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁵We also note that 21st Century has filed a Petition for Rule Making proposing a Channel 282A allotment at Sibley, Iowa. This Petition for rule Making does not affect the resolution of this proceeding. A potential Channel 282A allotment at Sibley does not alter our underlying determination that a Channel 262A allotment at Sibley and a Channel 261A allotment at Brandon is preferable to a single Channel 261C3 allotment at Brandon.

Brandon, South Dakota

261A

7. A filing window for Channel 261A at Brandon, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202)418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau